

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

GERALD TODD BENNETT, JR.,)	
)	
Plaintiff,)	
)	
)	No. CIV-16-580-M
v.)	
)	
LENNIS MILLER, Sheriff, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se*, has brought this civil rights action pursuant to 42 U.S.C. § 1983. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

On May 31, 2016, Plaintiff filed an Application for Leave to Proceed *In Forma Pauperis* in this action. However, the Application was missing the signature of an authorized officer at the jail where Plaintiff is confined and also missing a certified copy of the statement of Plaintiff's institutional account(s) for the six-month period immediately preceding the filing of his action, both as required by 28 U.S.C. § 1915(a)(2).

By Order entered June 6, 2016, the undersigned directed Plaintiff to cure these deficiencies in his Application on or before June 24, 2016. Plaintiff was advised in the Order that his failure to comply with the Court's Order would result in a recommendation of

dismissal of the action without prejudice and without further notice.

To this date, Plaintiff has not responded to the Court's Order. The undersigned finds that Plaintiff's failure to comply with this Court's Order, together with the Court's right and responsibility to manage and control its case load, warrant dismissal of this action without prejudice. See Fed. R. Civ. P. 41(b); Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007)(noting the court applies Fed. R. Civ. P. 41(b) to allow *sua sponte* dismissal for "failure to . . . comply with the rules of civil procedure or court's orders"): Bradenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980)(*per curiam*); Martinez v. Obermeyer, 117 F.3d 1428 (Table), 1997 WL 392251 (10th Cir. 1997)(unpublished op.)(upholding dismissal of civil rights action for failure to comply with Court's Order to file pleading and motion on proper forms).

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's cause of action be DISMISSED without prejudice. Plaintiff is advised of the right to file an objection to this Report and Recommendation with the Clerk of this Court by July 27th, 2016, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996)("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

This Report and Recommendation disposes of all issues referred to the undersigned

Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 7th day of July, 2016.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE